UNITED STATES PATENT AND TRADEMARK OFFICE

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EXAMINER
PARK, JEONG S

ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _18 June 2009_.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-49_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-49_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _6/18/2009_.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   This communication is in response to Application No. 10/682,636 filed on

10/8/2003. The amendment presented on 6/18/2009, which provides change to the

specification, and amends claims 1-14, 16-28, and 30-49, is hereby acknowledged.

Claims 1-49 have been examined.

Claim Objections

2.   The amendment presented on 6/18/2009 providing change to the claims is noted.

All prior objections to the claims are hereby withdrawn.

Claim Rejections - 35 USC § 112

3.   The amendment presented on 6/18/2009 amending claim 3 obviates the

outstanding 35 USC 112 rejections, and they are hereby withdrawn.

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

5.   Claims 1-5, 10-19, 24-29, 31-35 and 40-44 are rejected under 35 U.S.C. 103(a)

as being unpatentable over Chmaytelli et al. (hereinafter Chmaytelli)((US Pub. No.

2002/0194325 A1) in view of Hamamoto et al. (hereinafter Hamamoto)(US Patent No.

6,622,151 B1).

        Regarding claims 1 and 29, Chmaytelli teaches as follows:

A method for providing a learned upload (equivalent to download) time estimate (estimation of user-specific length of time required to download application program, see, e.g., abstract), comprising:

reviewing historical uploading information for one or more previous uploads, wherein for each previous upload the historical uploading information includes a previous upload size and an upload start marker (the estimated length of time to download is based on data transfer rates calculated during a set period of time prior to the download request, see, e.g., page 2, paragraph [0018]);

computing an average transfer rate from the historical uploading information for the one or more previous uploads (the estimated length of time to download is based on data transfer rates calculated during a set period of time prior to the download request, see, e.g., page 2, paragraph [0018] and page 6, paragraph [0070] and figure 5a), and deriving from the average transfer rate and upload size an upload time estimate for the files presently selected for uploading and providing the upload time estimate to a user (see, e.g., page 7, paragraph [0086]); and

determining the average data transfer time (see, e.g., page 4, paragraph [0047]).

Chmaytelli does not teach of determining a match between uploading information and the historical uploading information.

Hamamoto teaches as follows:

The history of file transfer (interpreted as applicant's historical uploading information) is controlled and managed by using the service-management-book unit (13 in figure 1)(see, e.g., col. 12, lines 15-20);

the service-management-book unit includes transfer start time, transfer end time

and data size for registration and management purpose(see, e.g., col. 6, line 63 to col.

7, lines 20 and figure 3);

the items for service search are used when searching for a specified service

such as file transfer results indicating a start/end time of file transfer and a data size of

file transfer (see, e.g., col. 7, lines 21-41); and

determining if there is a match or likeness between uploading information,

including a new upload start marker and an upload size, in total, of one or more files

presently selected for uploading, and the historical uploading information for any of the

previous uploads (search unit,12 in figure 1, searches the matched search results from

the service-management-unit comparing a search condition and reflects the search

results, see, e.g., col. 9, lines 1-36).

It would be obvious to a person skilled in the art at the time of the invention was

made combine Hamamoto with Chmaytelli in order to effectively collect and manage

data transfer operations.

Regarding claims 2, 16 and 32, Chmaytelli does not teach the historical

uploading information further includes a number of files uploaded and a total time the

previous upload actually took to complete, wherein the upload start marker is a

timestamp and wherein the new upload start marker is a new timestamp.

Hamamoto teaches as follows:

the historical uploading information further includes a number of files uploaded

(items for indicating file transfer) and a total time the previous upload actually took to

complete (transfer start time and end time), wherein the upload start marker is a

timestamp and wherein the new upload start marker is a new timestamp (see, e.g., col.

6, line 63 to col. 7, lines 20 and figure 3).

It would be obvious to a person skilled in the art at the time of the invention was

made combine Hamamoto with Chmaytelli in order to effectively collect and manage

data transfer operations.

Regarding claims 3, 17 and 33, Chmaytelli teaches as follows:

The one or more files presently selected for uploading have an average file size,

the average file size being a ratio between the upload size and number of files

presently selected for upload, and wherein computing the average transfer rate

includes computing a ratio between an aggregate of the previous upload sizes and an

aggregate of the total times of the previous uploads, and setting the transfer rate equal

to the average transfer ratio unless the average file size is smaller than the average

transfer rate multiplied by one second, in which case the transfer rate equals the

average file size per second (calculating the average transfer rate from previous

download, see, e.g., page 2, paragraph [0017]-[0018]).

Regarding claims 4, 18 and 34, Chmaytelli teaches as follows:

The upload time estimate is derived by computing a ratio between the upload

size and the average transfer rate (see, e.g., page 2, paragraph [0017]).

Regarding claims 5, 19 and 35, Chmaytelli does not teach of searching a

particular previous upload.

Hamamoto teaches as follows:

Obtaining the total time of the particular previous upload using its historical uploading information (the items for service search are used when searching for a specified service such as file transfer results indicating a start/end time of file transfer and a data size of file transfer, see, e.g., col. 7, lines 21-41); and

using the total time as the upload time estimate for the files presently selected for uploading (search unit,12 in figure 1, searches the matched search results from the service-management-unit comparing a search condition and reflects the search results, see, e.g., col. 9, lines 1-36]).

It would be obvious to a person skilled in the art at the time of the invention was made combine Hamamoto with Chmaytelli in order to effectively collect and manage data transfer operations.

Regarding claims 10 and 40, Chmaytelli does not teach of determining whether any previous uploads have been tracked and based on existence or nonexistence of historical uploading information for any previous uploads determining whether or not to provide the upload time estimate.

Hamamoto teaches as follows:

The service search unit (12 in figure 1) searches the matched search results from the service-management-unit comparing a search condition and reflects the search results (see, e.g., col. 9, lines 1-36). Therefore the service search unit determines whether any previous file transfer has been tracked and existence.

It would be obvious to a person skilled in the art at the time of the invention was made combine Hamamoto with Chmaytelli in order to effectively collect and manage data transfer operations.

Regarding claims 11, 24 and 41, they are rejected for similar reason as presented above per claims 10 and 40.

Hamamoto further teaches as follows:

determining whether historical upload information for the one of more previous uploads has been retrieved from a data structure (see, e.g., col. 6, lines 5-9 and figure 3) and if not retrieve the historical upload information for the one of more previous uploads (the service search unit searches the matched search results from the service-management-unit comparing a search condition and reflects the search results, see, e.g., col. 9, lines 1-36).

Regarding claims 12, 25 and 42, they are rejected for similar reason as presented above per claims 11, 24 and 41

Regarding claims 13, 14, 26, 27, 43 and 44, it would be obvious to a person skilled in the art at the time of the invention was made limit the number of previous uploads stored due to the storage limitation.

Regarding claim 15, it is rejected for similar reason as presented above per claims 1 and 29.

Chmaytelli further teaches as follows:

initiate uploading of one or more files selected for uploading and having, in total, an upload size (316 in figure 3 and figure 5b).

Hamamoto further teaches as follows:

saving a timestamp representing a start time of the initiated uploading (transfer

start time, see, e.g., col. 7, lines 21-41 and figure 3); and

tracking the upload of the selected files and upon completion of the upload

determining the stop time and the total time the upload took (see, e.g., col. 6, lines 5-

9).

Regarding claims 28 and 31, Chmaytelli teaches as follows:

The upload time estimate is provided to a user for display (time estimate, see,

e.g., figure 5b).

6.   Claims 6-9, 20-23 and 36-39 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Chmaytelli et al. (hereinafter Chmaytelli)((US Pub. No. 2002/0194325

A1) in view of Hamamoto et al. (hereinafter Hamamoto)(US Patent No. 6,622,151 B1),

and further in view of Nakamura (US Patent No. 6,751,795).

Regarding claims 6, 20 and 36, Chmaytelli in view of Hamamoto do not teach of

comparing an upload size and timestamp to determine a match.

Nakamura teaches as follows:

A different detector (111 in figure 1) compares files to determine the file operation

(see, e.g., col. 2, line 62 to col. 3, line 12); and

The difference detector can find the difference by comparing time stamps, file

sizes, file versions and file data (see, e.g., col. 3, lines 66-67).

It would be obvious to a person skilled in the art at the time of the invention was

made combine Nakamura with Chmaytelli in view of Hamamoto in order to efficiently

compare files stored at different locations based on the difference on time stamp and

file size.

Regarding claims 7-9, 21-23 and 37-39, Nakamura teaches as follows:

The difference detector can find the difference by comparing time stamps, file

sizes, file versions and file data (see, e.g., col. 3, lines 66-67). It would be obvious to a

person skilled in the art at the time of the invention was made have the well known

threshold range (equivalent to applicant's predetermined period) to determine a match.

Therefore, they are rejected for similar reason as presented above per claims 6, 20

and 36.

7.   Claims 30 and 45-49 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Chmaytelli et al. (hereinafter Chmaytelli)((US Pub. No. 2002/0194325 A1) in view

of Hamamoto et al. (hereinafter Hamamoto)(US Patent No. 6,622,151 B1), and further

in view of Fredlund et al. (hereinafter Fredlund)((US Pub. No. 2003/0058457).

Regarding claims 30 and 46, Chmaytelli teaches a communication with wireless

network (see, e.g., page 1, paragraph [0014]).

Chmaytelli in view of Hamamoto do not specify a communication through the

Internet.

Fredlund teaches transferring images from a user to a service provider via the

Internet (see, e.g., page 3, paragraph [0033]).

It would be obvious to a person skilled in the art at the time of the invention was made combine Fredlund with Chmaytelli in view of Hamamoto in order to establish a connection between the user's computer and a product provider.

Regarding claim 45, Fredlund teaches as follows:

The one or more files are self-extracting executable (.exe) files or files including JPEG (Joint Photographic Experts Group), GIF (Graphic Interchange Format), PNG (Portable Network Graphics) or BMP (bit mapped) formatted files (uploading image file name extension .jpg, see, e.g., page 5, paragraph [0049]). Therefore, it is rejected for similar reason as presented above per claim 30.

Regarding claim 47, Fredlund teaches as follows:

The host server is operative to send html (hypertext markup language) pages to the client, wherein the client is operative to upload the one or more files to the upload server, and wherein the upload server is operative to indicate failure or success of file uploads (uploading to the service provider using a web browser, see, e.g., page 1, paragraph [0003]). Therefore, it is rejected for similar reason as presented above per claim 30.

Regarding claim 48, Fredlund teaches as follows:

The html pages contain features of a file uploader tool, including file selection, via browsing and drag-drop operations, and wherein the upload time estimate changes along with additional selections of files before they are uploaded to the upload server (see, e.g., page 4, paragraph [0040]-[0041]). Therefore, it is rejected for similar reason as presented above per claim 30.

Regarding claim 49, Fredlund teaches as follows:

The files contain image data of photos and wherein further features of the

uploader tool include photo preview (see, e.g., page 4, paragraph [0040]). Therefore, it

is rejected for similar reason as presented above per claim 30.

Response to Arguments

8.   Applicant's arguments filed 6/18/2009 have been fully considered but they are

not persuasive.

A.   Summary of Applicant's Arguments

In the remarks, the applicant argues as followings:

1) Regarding claim 1, modifying the method in Chmaytelli to match download

information between currently selected download and historical downloads would alter

the principle of operation thereof. (MPEP § 2143.01) For example, modifying the

method of Chmaytelli to match by download transfer size, based on the method

disclosed in Hamamoto, would impermissible change the principle of operation, i.e., to

average historical data. For example, the modification would lead to data transfer rates

selected, on average, from the middle of the time-ordered historical data. On the

contrary, Chmaytelli emphasizes the importance of estimating the transfer rate based

on data closest in time to an anticipated download. (Id. at Paragraph 0069) Specifically,

Chmaytelli states that "the data transfer rates calculated later in time may be more

accurate, and provide a better estimate of the time to download the selected application

program." (Id. at Paragraph 0076) Moreover, selecting one download transfer rate

based on a specific match would lead to errors associated with taking a single sample

from a population instead of the population average. Chmaytelli emphasizes the need to

average because "the data transfer rates for wireless devices are not constant and vary

depending on different factors affecting the S/N ratio." (Id. at Paragraph 0013)

Implementing the method disclosed in Hamamoto into the method described in

Chmaytelli runs counter to the problem being addressed within the Chmaytelli

reference.

1) Regarding claim 1, Chmaytelli teaches away from implementing its disclosed

systems and methods to estimate transfer rates on personal computers. Chmaytelli

states that the data transfer rate, determined by the modem speed, is constant for

personal computers (Id. at Paragraph 0012). Chmaytelli further states that "there is no

examination of the data transfer rates immediately preceding a download that might

significantly affect the estimate" on personal computers. (Id.) The combined statements

teach away from averaging the historical data transfer rates or to select a specific past

data transfer rate, in light of Hamamoto or otherwise, in order to estimate the current

transfer time on personal computers.

B.   Response to Arguments:

In response to argument 1), Chmaytelli emphasizes the importance of estimating

the transfer rate based on data closest in time to an anticipated download (see, e.g.,

page 6, paragraph [0069], lines 16-18). But Chmaytelli teaches the claimed limitations

of computing an average transfer rate from the historical uploading information for the

one or more previous uploads as follows:

The estimated length of time to download is based on data transfer rates

calculated during a set period of time prior to the download request (see, e.g., page 2,

paragraph [0018]); and

the wireless device proceeds to calculate an "average" data transfer rate for the

wireless device based on the series of data transfer rate calculations previously

accomplished (see, e.g., page 6, paragraph [0069], lines 1-8).

The applicant cited portion of paragraph [0069] describes one of various

manners of calculating the average data transfer rate by emphasizing the recently

calculated data transfer rate is more accurate.

Chmaytelli teaches all claimed limitations except for determining a match

between uploading information and the historical uploading information.

Hamamoto teaches the deficiency as presented above in claim 1.

In response to argument 2), the applicant cited portion of paragraph [0012]

describes the description of the related art not the disclosure of Chmaytelli.

Chmaytelli in view of Hamamoto teach of averaging the historical data transfer

rates (the wireless device proceeds to calculate an "average" data transfer rate for the

wireless device based on the series of data transfer rate calculations previously

accomplished, see, e.g., Chmaytelli reference, page 6, paragraph [0069], lines 1-8) or to

select a specific past data transfer rate (the items for service search are used when

searching for a specified service such as file transfer results indicating a start/end time

of file transfer and a data size of file transfer, see, e.g., Hamamoto reference, col. 7,

lines 21-41) in order to estimate the current transfer time on personal computers as

presented above in claim 1.

Conclusion

9.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

10.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to JEONG S. PARK whose telephone number is (571)270-

1597. The examiner can normally be reached on Monday through Friday 7:00 - 3:30

EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Nathan Flynn can be reached on 571-272-1915. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. S. P./
Examiner, Art Unit 2454

September 9, 2009
                              /NATHAN FLYNN/
                    Supervisory Patent Examiner, Art Unit 2454